

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

AMERICAN CIVIL LIBERTIES UNION,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Defendant.

Hon.

Case No.

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COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTORY STATEMENT

1. This is an action under the Freedom of Information Act (“FOIA”), 4 U.S.C. § 552 *et. seq.*, for declaratory and injunctive relief to compel the disclosure and release of agency records improperly withheld from Plaintiff by the Defendant U.S. Department of Homeland Security (“DHS”), and its component, U.S. Immigrations and Customs Enforcement (“ICE”).

2. Plaintiff seeks to compel the release of records on a matter of public concern, namely ICE’s immigration enforcement policies, practices, and activities in Michigan. The disclosure of the requested records will help inform public debate around these issues.

3. Specifically, Plaintiff seeks to compel the release of records related to the illegal detention of Luis Valdez, who is a U.S. citizen, and his mother, Telma Valdez, who is a legal permanent resident. The Michigan residents, who are Latino, were handcuffed and detained by ICE agents, and the mother was physically assaulted, even though both Mr. Valdez and Ms. Valdez produced driver’s licenses to prove their identities. Plaintiff also seeks to compel the release of records related to ICE enforcement activities, including records on issues such as racial profiling and the training and supervision of ICE personnel.

JURISDICTION AND VENUE

4. This Court has both subject matter jurisdiction over Plaintiff’s claims and personal jurisdiction over Defendant agency pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346.

5. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B), as the Plaintiff resides in the Eastern District of Michigan. Venue also lies in this district pursuant to 28 U.S.C. §§ 1391 and 1402.

PARTIES

6. Plaintiff American Civil Liberties Union of Michigan (“ACLU”) is a 501(c)(4) non-profit, non-partisan, membership-based organization that engages in public education and lobbying about the constitutional principles of liberty and equality in the state of Michigan. The ACLU of Michigan’s headquarters and principal place of business are in Detroit, Michigan. The ACLU of Michigan sues on its own behalf and on behalf of its members.

7. Defendant Department of Homeland Security (“DHS”) is the federal agency responsible for securing the nation’s borders, in part by enforcing federal immigration laws and managing the immigration process. Immigration and Customs Enforcement (“ICE”), a component entity of DHS, is responsible for enforcing federal immigration statutes. DHS is an agency with the meaning of 552 U.S.C. § 552(f).

STATEMENT OF FACTS

The Unlawful Detention of Luis Valdez and Telma Valdez

8. Luis Valdez is a native-born U.S. citizen. His mother, Telma Valdez, is a legal permanent resident and has lived in the United States for almost twenty-two years.

9. On February 23, 2011, Luis Valdez and Telma Valdez drove to 43 Rose Street, Grand Rapids, Michigan 49507. As Luis drove into the driveway, ICE agents came running towards the car.

10. An ICE agent pointed his gun at Luis and demanded identification. Luis and Telma both produced valid driver’s licenses.

11. The ICE agents handcuffed both Luis and Telma, and physically assaulted Telma by repeatedly banging her head down on the trunk of the car while holding a gun to her back. Telma was injured.

12. Luis and Telma were both forced to enter an apartment at 43 Rose Street, Grand Rapids, Michigan. Luis and Telma tried to explain that he was a U.S. citizen and she was a legal permanent resident. The agents responded with verbal abuse.

13. Finally, the agents let Luis and Telma go. An agent threatened Telma that if she did anything about the unlawful arrest and abuse, she would lose her legal status.

14. The agent who uncuffed Telma squeezed the handcuffs down over Telma's hands, causing injury. Telma was shoved out the door with such force that she hit a handrail on the way down, causing further injury. Luis was also thrown out the door.

15. Later that evening, Telma sought medical attention at a local hospital.

16. Plaintiff has provided advice and support to Luis Valdez and Telma Valdez, including arranging for its companion organization, the American Civil Liberties Union Fund of Michigan, and the other undersigned counsel to represent the Valdezes in a related administrative complaint under the Federal Tort Claims Act.

17. The release of the requested records will help clarify ICE's actions during the February 23, 2011 incident.

Repeated Reports of Abusive and Unlawful Practices by ICE in Michigan

18. Over the last months there have been repeated media reports about abusive or unlawful practices by ICE agents operating in Michigan. *See, e.g.*, Plaintiff's FOIA Request, at 7-9 (listing sample media articles) (Exhibit A).

19. Plaintiff also regularly receives reports from immigration attorneys, immigrant advocacy organizations, and organizations representing communities of color about abusive or unlawful practices by ICE agents. These reports include reports of racial profiling, unlawful entry into homes, enforcement at sensitive locations like schools, and physical abuse.

20. Plaintiff has participated in advocacy efforts regarding reform of abusive ICE enforcement practices, as well as public education events about ICE's practices.

21. The release of the requested records will provide information about ICE's enforcement activities in Michigan.

22. The information is of great public concern because the reports of abusive and illegal enforcement practices by ICE in Michigan have created fear among immigrant communities and communities of color. Moreover, these reports suggest that immigrants and people whose physical appearance leads some to falsely believe they are immigrants are at imminent risk of being subjected to abusive or unlawful enforcement practices by ICE.

Plaintiff's FOIA Request to Immigration and Customs Enforcement ("ICE")

23. By letter dated May 25, 2011, Plaintiff American Civil Liberties Union of Michigan submitted a FOIA request to ICE. A copy of that letter is attached to this complaint as Exhibit A.

24. That letter was received by ICE on May 25, 2011.

25. Plaintiff's FOIA request was for "all records related to the ICE actions that took place on the afternoon and evening of February 23, 2011 at 43 Rose Street, Grand Rapids, MI 49507." Plaintiff's request provided a detailed list of the records sought, specifying, for example, that records were sought for a complaint call made to the ICE hotline by Luis Valdez in relation to the February 23, 2011 incident.

26. Plaintiff's FOIA request also asked for records related to the training and supervision of ICE personnel; records related to the operational structure of the Detroit ICE office; job descriptions for various ICE staff; ICE policies and protocols on a variety of subjects,

such as racial profiling and use of weapons; and all complaints regarding ICE officers operating out of or in collaboration with the ICE field office in Detroit.

27. Plaintiff's letter included a request for expedited processing, pursuant to 6 C.F.R. § 5.5(d). Plaintiff's explained that in light of the exceptional public and media interest in ICE operations in Michigan, there was a "particular urgency to inform the public." 6 C.F.R. § 5.5(d).

28. Plaintiff also requested a waiver of all fees in accordance with 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of Homeland Security's FOIA/PA Guidelines, 6 C.F.R. § 5.11(k)(1).

29. Plaintiff received three letters from ICE. All three letters were dated May 25, 2011, and were postmarked June 1, 2011.

30. The first ICE letter (attached as Exhibit B) indicated that "we may encounter some delay in processing your request," and noted that "DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B)." The letter further noted that in relation to Plaintiff's fee waiver request, the "request will be held in abeyance pending the quantification of responsive records." *See* Exhibit B, at 2.

31. The second ICE letter (attached as Exhibit C) stated that Plaintiff's request for expedited treatment was denied because, according to ICE, the Plaintiff "failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally." *See* Exhibit C, at 2.

32. The third ICE letter (attached as Exhibit D), like the first, indicated that there may be delay in processing the request and that ICE was invoking a 10-day extension. Unlike the first letter, which indicated that the fee waiver request was being held in abeyance, the third letter

did not mention the fee waiver request. Instead it indicated that the ACLU would be charged at the rate applied to media requestors.

33. FOIA requires an agency response within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(i).

34. FOIA allows the agency to invoke the 10-day exception only in “unusual circumstances.” *See* 5 U.S.C. § 552(a)(6)(B)(i).

35. Although ICE invoked the 10-day exception, its letters did not claim that “unusual circumstances” exist in this case.

36. It has now been 32 working days since ICE’s receipt of Plaintiff’s FOIA request.

37. To date, ICE has not provided the records requested by Plaintiff in its FOIA request.

38. Due to ICE’s failure to respond to the FOIA request, Plaintiff has automatically exhausted the applicable administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

39. ICE has wrongfully withheld the requested records from the Plaintiff.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Defendant DHS Failed to Disclose and Release Records Responsive to Plaintiff’s Request

40. Plaintiff incorporates by reference all prior paragraphs.

41. ICE, a component of DHS, has violated Plaintiff’s right to DHS records under 5 U.S.C. § 552.

SECOND CLAIM FOR RELIEF

Defendant DHS Failed to Provide Expedited Treatment of Plaintiff's Request

42. Plaintiff incorporates by reference all prior paragraphs.

43. Plaintiff requested expedited treatment of the FOIA request, but that request was denied.

44. Expedited treatment is warranted because Plaintiff's request was made "by a person primarily engaged in disseminating information," and there is "urgency to inform the public about an actual or alleged federal government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II), and 6 C.F.R. § 5.5(d)(1)(ii).

45. Defendant's failure to grant Plaintiff's request for expedited processing and to process Plaintiff's request as soon as practicable violated FOIA, 5 U.S.C. § 552(a)(6)(E).

THIRD CLAIM FOR RELIEF

Defendant DHS Has Failed to Decide the Fee Waiver Request Based on the Face of the Request, and Further is Barred from Charging Fees under 5 U.S.C. §552(a)(4)(A)(viii)

46. Plaintiff incorporates by reference all prior paragraphs.

47. Although fee waiver determinations must be made based on the face of the request, Defendant failed to make such a determination and instead responded that the "request will be held in abeyance pending the quantification of responsive records." *See* First Response Letter from Immigration and Customs Enforcement, dated May 25, 2011, postmarked June 1, 2011, at 2 (Exhibit B).

48. Plaintiff is entitled to a fee waiver under 5 U.S.C. §552(a)(4)(A)(iii), and the Department of Homeland Security's FOIA/PA Guidelines, 6 C.F.R. § 5.11(k)(1).

49. Furthermore, because the Defendant has failed to abide by the timeliness requirements set out in 5 U.S.C. § 552(a)(6), Defendant is now barred under 5 U.S.C. § 552(a)(4)(A)(viii) from charging fees for Plaintiff's request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Assume jurisdiction over this matter;
2. Order Defendant to disclose the requested records in their entireties and make copies available to Plaintiff;
3. Provide for expeditious proceedings in this action;
4. Order that Defendant shall not charge fees for Plaintiff's request;
5. Award Plaintiff costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
6. Grant any other relief the Court deems appropriate.

Dated: July 12, 2011

Respectfully submitted,

/s/ Miriam J. Aukerman

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